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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,306	03/10/2004	Karl-Heinz Lenzkes	11883-0240	4431
24504	7590	12/07/2006	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948			BODAWALA, DIMPLE N	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/797,306

**Applicant(s)**

LENZKES, KARL-HEINZ

**Examiner**

Dimple N. Bodawala

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/19/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

The disclosure is objected to because of the following informalities:

- Reference No. 11 is involved with multiple components such as “a die” (See Page 8, line 15), “the leg” (See Page 8, line 18), and “the stand” (See page 9, line 12).
- The phrase “ the leg 7 --- the apparatus 100” is rendered indefinite and vague because the leg (7) is fixedly connected to the die (1) instead of the die (11) serving as the stand of the apparatus (100) (See page 9, line 21 – 22, and Figure 1).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 - 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Moeller (U S Patent No. 2,200,515).

Moeller ('515) discloses the apparatus for the nut-cracking machine, which comprises the fixed jaw as a stationary die and the moveable jaw as a moveable die (See col.1, line 10). The moveable jaw (25) is being designed as a carriage or a falling weight, which is designed and arranged to fall down towards the stationary jaw (15) due to gravity or effect of the relatively accelerated rate of the jaw movement into the pressure engagement with the nut (See col.1 line 40 – 55). The moveable jaw (25) discloses the mass that is involved with cracking operation and is designed and arranged to be placed at a falling height from the stationary jaw (15), in which the mass and falling height is being chosen to crack the nut (See figures 1 to 3, Col.4 lines 7 – 13).

Figure 1 discloses the moveable die (25) that is designed and arranged to guide in a vertical direction. Both dies have a surface which are included the impression and being arranged to face one another. Furthermore, figure

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discloses a stand or a base, which includes an approximately horizontal supporting surface, which is designed and arranged to hold a nuts by having the cupped recess (See col.3 line 66 – 68). It also discloses the fall bar by having the vertical axis and is being connected to the stand. It further discloses the moveable-cracking element, which is being designed and arranged to be moveable with respect to the fall bar due to the gravity in a way that the moveable cracking element or carriage falls down towards the base to crack the nut (See col.4, lines 10 – 50).

It also teaches that the moveable jaw discloses an opening, and the fall bar (18) is being designed and arranged to protrude through the opening. Furthermore, the fall bar (18) has a inverted U shaped design with the first leg which is fixedly connected to the stationary jaw (15), and the second leg which is being designed and arranged to protrude through the moveable jaw (See Figures 1 – 3; and col.2, lines 41 – 53). The second leg of the fall bar is associated with moveable die and being arranged and designed for freely end above the impression of the stationary die during the cracking operation. The fall bar includes the plurality of marks or grip, which is being associated with nuts size and shape, and also different kinds of falling heights (See col.3 lines 15 – 20).

Furthermore, Moeller ('515) discloses the stationary die, which has an approximately spherical shape by having the cupped recess, and bottom side includes the impression (See col.3 lines 64 – 68). It also discloses the sleeve portion (21) as a splash guard element, which is being designed and arranged close to the dies (See col.3 line 1 – 5). The stationary die (15) is formed of suitable material as by die – casting, and has a steel jaw element, which is greater mass than the mass of the moveable die (25) (See col.2 line 41 – 43).

Claim 1 recites that the falling die is arranged to fall down towards the stationary die due to gravity. An apparatus claim must be distinguished from the prior art in terms of structure rather than its function or the manner in which it operates. *In re Schreiber*, 128 F.3d 1473, 1477- 78, 44 USPQ2d 1429, 1431 – 32 (Fed. Cir, 1997); *Ex. Parte Masham*, 2 USPQ2d 1647 (Bed. Pat. App. & Inter. 1987); MPEP 2114. The mere recitation of gravity acting on the falling weight relates only to the operation of the claimed apparatus, not any discernible apparatus structure. In any event, the apparatus of Moeller includes a handle (29) which is pushed down would inherently be aided by gravity acting downward on the falling die. As such, the reference of Moeller anticipates this limitation.

Claims 1 – 5, 8, 10 – 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Abrahamsson (U S Patent No. 6,135,021).

Abrahamsson ('021) discloses the nutcracker, which comprises an anvil as a stationary die, and a moveable die discloses the striking member and the impact member. The impact member is designed and arranged with the striking member wherein the striking member is arranged to be forced by its own weight against the impact member under the attraction of gravity so as to impart the cracking force to the shell of a nut received between the impact member and the anvil (See abstract, col.3 lines 26-30).

Figure 1 discloses the base plate as a stand, which is being designed and arranged as a bowl shape, which is approximately spherical shape to receive and hold the nuts, and bottom side has an impression. It teaches the second side bar as a fall bar is being connected to the stand with an approximately vertical axis. It also discloses the moveable cracking element the impact member is being designed and arranged to be moveable with respect to the fall bar due to gravity in a way that the moveable cracking element falls down towards the surface of the stationary die to crack the nut (See col.2 line 21 – 30). Furthermore, the moveable die is designed and arranged to be guided in the vertical direction with first side or falling bar, which is connected, to the moveable die through the opening (See col.1 line 59 – 65). It further discloses the die has a surface with impression, wherein the impressions are being arranged to face one another (See figure).

Abrahamsson ('021) discloses the guiding device for guiding the dies.

The guiding device is connected to the impact member in a movement towards and away from the anvil and for guiding the striking member towards and away from the impact member (See col.1 lines 44 – 47). It also discloses the striking member which has been reached at a suitable height which is associated with the shape and size of the nut, the operator releases the striking member whereupon the striking member by its own weight falls against the impact member under attraction of gravity (See col.3 lines 26 – 30).

Moeller ('515) and/or Abrahamsson ('021) disclose all the claimed structural limitations, and, thus, the claims are anticipated.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dimple N. Bodawala whose telephone number is (571) 272-6455. The examiner can normally be reached on Monday - Friday at 8:30 am - 5:00 pm.




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra N. Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DNB



Donald Heckenberg 12-5-6  
Primary Examiner  
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